Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SEMIRARA MINING AND POWER CORPORATION,
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9133
For: Refund

Members:
DEL ROSARIO, P.J., ***Chairperson,***
UY, and
MINDARO-GRULLA, JJ.

Promulgated:
JUL 27 2018 ; 8:10 am

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by Semirara Mining and Power Corporation pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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[1] Sec. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

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Petitioner seeks the refund of the alleged illegally collected or erroneously paid value-added tax (VAT) in the amount of ₱27,341,714.00.

Petitioner Semirara Mining and Power Corporation is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address at 2nd Floor, DMCI Plaza, 2281 Don Chino Roces Avenue, Makati City. The primary purpose of its corporate existence is to "search for, prospect, explore, dig and drill for, mine, exploit, extract, produce, mill, purchase or otherwise acquire, store, hold, transport, use, experiment with, market, distribute, exchange, sell and otherwise dispose of, import, export and handle, trade, and general deal in, ship coal, coke and other coal products of all grades, kinds, forms, descriptions and combinations, and in general the products and by products which may be derived, produced, prepared, developed, compounded, made or manufactured therefrom; to acquire, own, maintain, and exercise the rights and privileges under the coal operating contract/s within the purview of Presidential Decree No. 972, the 'Coal Development Act of

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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
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> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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1976' and any amendment thereto; to mine, quarry and excavate for clay, rock and other earthen minerals, and to manufacture the same into cement of all kinds, lime, limestones, plaster and natural and artificial stone; to render all aspect of technical and management services to the government of the Republic of the Philippines, or any of its agencies or instrumentalities, or to any individual, partnership, association or corporation organized with similar purpose, in and outside of the Philippines and to acquire by purchase, lease or exchange, and to hold in fee simple or upon royalty of rental or otherwise, in any other manner allowed by law, in the Philippines, mining claims, grounds or lodes, mining and mineral rights, mineral concessions or grants, or any interest in the same and to sell, exchange, lease or in any other manner to dispose of the whole or any part or any interest in the same when desirable."[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On September 2, 2013, petitioner was assessed and directed to pay VAT on importation on its first partial shipment of fuel (diesoline), which arrived at the Port of Subic.[4] Said assessment was said to be pursuant to Revenue Regulations (RR) No. 2-2012, which is the "Tax Administration Treatment of Petroleum and Petroleum Products Imported into the Philippines including those coming in through Freeport Zones and Economic Zones and Registration of All Storage Tanks, Facilities, Depots and Terminals."

In a letter dated August 15, 2013, petitioner protested said assessment invoking its tax exemption privilege under Presidential Decree (PD) No. 972, otherwise known as "The Coal Development Act of 1976", and BIR Ruling No. DA-002-2006,[5] due to its Coal Operating Contract (COC) with the government.[6]

[3] Exhibit "P-21", Docket, vol. II. pp. 968-978.
[4] Exhibits "P-3" and "P-5", Docket, vol. II. pp. 754 and 757.
[5] Exhibit "P-18", Docket, vol. II, pp. 934-937.
[6] Exhibit "P-6", Docket, vol. II, p. 758.

On August 22, 2013, petitioner submitted a Legal Memorandum arguing that RR No. 2-2012 is inapplicable to petitioner's direct importation of petroleum and petroleum products that are intended for use and consumption in its own mining operations.[7]

Considering that the shipment will not be released until taxes thereon are paid and on account of its urgent need for fuel in its mining operations, petitioner was compelled to pay under protest the assessed amount of ₱27,341,714.00 on September 3, 2013.[8]

On October 3, 2013, petitioner filed before the Regional Trial Court (RTC) of Makati City a Petition for Declaratory Relief against the BIR Commissioner, the Secretary of Finance, and the Commissioner of Customs, Docketed as Special Civil Action No. 131171, seeking declaration from said court that RR No. 2-2012 does not apply to petitioner and that its direct importations of fuel for its own use and consumption are not subject to VAT and excise tax.[9]

During the pendency of Special Civil Action No. 131171, petitioner's second partial shipment of imported fuel arrived at the Port of Subic. Petitioner was assessed for VAT and excise tax in the amount of ₱24,967,738.55, as indicated in the Bureau of Customs Import Entry and Internal Revenue Declaration (IEIRD) attached to the Tanker Bill of Lading B/L No. ML-6661 covering said shipment.

On October 14, 2013, petitioner filed an Urgent Application for Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction in Special Civil Action No. 131171, praying that respondents therein be enjoined from applying RR No. 2-2012 on its fuel importations intended for direct use and consumption,[10] which was granted by the RTC of Makati City, Branch 146 on November 18, 2013.[11]

After trial, the RTC of Makati City, Branch 146 granted petitioner's Petition for Declaratory Relief on February 10, 2014 and declared that in view of the tax exemption provided by Presidential

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[7] Exhibit "P-7", Docket, vol. II, p. 759.
[8] Exhibit "P-2", Docket, vol. II, p. 753.
[9] Exhibit "P-8", Docket, vol. II, pp. 760-772.
[10] Exhibit "P-10", Docket, vol. II, pp. 818-821.
[11] Exhibit "P-11", Docket, vol. II, pp. 827-835.

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Decree No. 972 and the COC, RR No. 2-2012 is inapplicable to petitioner's direct importation of petroleum and petroleum products.[12]

Petitioner then filed a formal claim for refund of the alleged illegally collected VAT with the BIR on May 29, 2015.[13]

For failure to act on the claim for refund within the reglementary period, petitioner filed the instant Petition for Review[14] with this Court on September 1, 2015.

Respondent filed his Answer[15] to the Petition for Review on December 1, 2015 and interposed the following special and affirmative defenses:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

xxx xxx xxx

Section 16 of Presidential Decree No. 972 (PD 972) has already been repealed; hence, respondent is now liable for Excise Tax and Value Added Tax (VAT).

1. Petitioner maintains that its fuel imports are tax exempt as provided under PD 972 which was affirmed by BIR Ruling No. DA-002-2006.

2. Respondent differs.

3. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.

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[12] Exhibit "P-13", Docket, vol. II, pp. 842-856.
[13] Exhibit "P-1", Docket, vol. II, pp. 746-752.
[14] Docket, vol. I, pp. 10-28.
[15] Docket, vol. I, pp. 409-415.

4. In the case at hand, petitioner failed to do so.

5. First, Section 16 of PD 972, which is petitioner's basis for its claim for exemption, was expressly repealed by Section 534 of Republic Act No. 7160 (RA 7160). It categorically states:

> **SECTION 534. Repealing Clause.** –
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> -xxx-
>
> (e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; Section 12 of Presidential Decree No. 87, as amended; Section 52, 53, 66, 67, 68, 69, 70, 71, 72, 73 and 74 of Presidential Decree No. 463, as amended; and **Section 16 of Presidential Decree No. 972, as amended**, and
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> -xxx-
>
> **(Emphasis supplied).**

6. Thus, the express repeal of Section 16 of PD972 indubitably proves the withdrawal of all existing tax incentives. In simpler terms, petitioner is not liable for Excise Tax and VAT on all importations.

7. Second, Section 193 of RA 7160 expressly withdrew all tax exemptions or incentives granted prior to its enactment, specifically:

> **SECTION 193. Withdrawal of Tax Exemption Privileges.** – Unless otherwise provided in this Code, **tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or –controlled corporations,** except local water districts, cooperatives duly registered under R.A. No. 6938, **non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.**

(Emphasis supplied).

8. Therefore, with the enactment of RA 7160, all incentives provided under PD 972, a law enacted prior to RA 7160, was effectively withdrawn, making petitioner duty bound to pay Excise Tax and VAT.

9. To further bolster respondent's position, Sections 105, 129 and 131 of the National Internal Revenue Code (Tax Code) expressly requires the payment of Excise Tax and VAT on all importations, to wit:

> SEC. 105. Persons Liable. – **Any person who, in the course of trade or business**, sells, barters, exchanges, leases goods or properties, renders services, and any person who **imports goods shall be subject to value-added tax (VAT) imposed in Sections 106 and 108 of this Code.**
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> **The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.**
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> -xxx-
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> **SEC. 129. Goods Subject to Excise Taxes. – Excise taxes apply to goods** manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition **and to things imported.**
>
> **The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.**
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>
> **SEC. 131. Payment of Excise Taxes on Imported Articles. –**
>
> **(A) Persons Liable. – Excise taxes on imported articles shall be paid by the owner**

> **or importer to the Customs Officers,** conformably with the regulations of the Department of Finance and before the release of such articles from the customs house, or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption
>
> -xxx-
>
> **(B) Rate and Basis of the Excise Tax on Imported Articles. – Unless otherwise specified imported articles shall be subject to the same rates and basis of excise taxes applicable to locally manufactured articles.**
>
> **(Emphasis supplied)**

10. Clearly, premised on the foregoing, petitioner is indubitably liable for Excise Tax and VAT.

Revenue Regulation No. 2-2012 (RR 2-12) is non-violative of the non-impairment clause of the Constitution.

11. Petitioner maintains that the imposition of Excise Tax and VAT will violate the constitutional guarantee against the non-impairment of contracts.

12. Again, this is misguided.

13. The Coal Operating Contract executed between the Energy Development Board and Vulcan Industrial and Mineral Exploration Corporation and Sulu Sea Oil Development Corporation which was assigned to petitioner, itself provides for the taxability of the operator therein. It states:

> **SECTION V. RIGHTS AND OBLIGATIONS OF THE PARTIES.**
>
> 5.1. The Operator shall have the following obligations:

-xxx-

j. Be subject to Philippine income tax;

-xxx-

14. Thus, having settled that the exemption provided by PD 972 has been repealed and that the Tax Code provides for taxability of petitioner as operator of the Coal Operating Contract, there can be no impairment of contract to begin with.

15. Assuming but definitely not conceding that there was really an impairment of the Coal Operating Contract, there were neither imposition of new conditions nor withdrawal of remedies available to petitioner.

16. In fact, Revenue Regulation No. 2-2012 merely prescribed the rules and regulations for the effective enforcement of Sections 105, 129 and 131 of the Tax Code.

17. The case of PAGCOR v. BIR explained:

> The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contracts shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. **There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.**

18. In fine, pursuant to the express provisions of the Tax Code and it obligations under the Coal Operating Contract, petitioner is liable for the payment of Excise Tax and VAT."

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The parties submitted their Joint Stipulation of Fact and Issue[16] on April 20, 2016 in compliance with the order of the Court during the Pre-Trial Conference held on March 31, 2016.[17]

Petitioner presented as its lone witness Mr. Jaime B. Garcia,[18] its Vice-President for Procurement and Logistics, who testified during the hearing on August 23, 2016[19] and identified his judicial affidavit.

Petitioner filed its Formal Offer of Evidence[20] on October 11, 2016, with respondent's Comment filed on October 19, 2016.[21]

In the Resolutions dated November 29, 2016[22] and April 4, 2017[23], the Court admitted petitioner's documentary evidence except for Exhibit "P-9".

Petitioner's documentary evidence which were formally offered and admitted by the Court are as follows:

Marking:	Description:
Exhibit P-1	Formal Claim for Refund of Illegally-Collected Value Added Tax, dated 20 May 2015, with the Bureau of Internal Revenue.
Exhibit P-2	Statement of Settlement of Duties and Taxes.
Exhibit P-3	Import Entry & Internal Revenue Declaration for the 1st partial shipment of diesoline.
Exhibit P-4	Secretary's Certificate.
Exhibit P-5	Assessment Notice.
Exhibit P-6	Letter to the Commissioner of Internal Revenue dated 15 August 2013. Original stamped "RECEIVED, August 15, 2013" by the Office of the Commissioner of the Bureau of Internal Revenue.

[16] Docket, vol. II, p. 684-690.
[17] Minutes of the Hearing, Docket, vol. II, pp. 676-677.
[18] Judicial Affidavit, Docket, vol. I, pp. 452-464.
[19] Minutes of the Hearing, Docket, vol. II, p. 716-717.
[20] Docket, vol. II, pp. 737-744.
[21] Docket, vol. II, pp. 985-987.
[22] Docket, vol. III, pp. 1235-1236.
[23] Docket, vol. III, pp. 1263-1265.

Exhibit P-7	Letter to the Commissioner of Internal Revenue dated 16 August 2013, with Memorandum attached. Original stamped "RECEIVED, August 22, 2013", by the ODCIR-LG and the Office of the Commissioner of the Bureau of Internal Revenue.
Exhibit P-8	Petitioner's Petition for Declaratory Relief, with attachments.
Exhibit P-10	Urgent Application for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction
Exhibit P-11	Order dated 18 November 2013 rendered by the Regional Trial Court of Makati City – Branch 146 in SCA No. 13-1171.
Exhibit P-12	Order dated 04 February 2014 rendered by the Regional Trial Court of Makati City – Branch 146 in SCA 13-1171.
Exhibit P-13	Resolution dated 10 February 2014 rendered by the Regional Trial Court of Makati City – Branch 146 in SCA 13-1171.
Exhibit P-14	Coal Operating Contract executed on 11 July 1977.
Exhibit P-15	Deed of Assignment executed on 14 May 1980
Exhibit P-16	Coal Operating Contract executed on 8 June 1983 between the Ministry of Energy and Semirara Coal Corporation
Exhibit P-17	Letter dated 13 May 2008 by the Department of Energy addressed to petitioner, on Semirara Mining Corporation's request for a fifteen (15) year term extension of its Coal Operating Contract (COC No. 5 Semirara Island)
Exhibit P-18	BIR Ruling No. DA-002-2006 dated 5 January 2006
Exhibit P-19	Certificate of Qualification for Tax Exemption under Presidential Decree No. 972 dated 3 July 2013 issued by the Department of Energy
Exhibit P-20	Amended Articles of Incorporation
Exhibit P-21	Amended Articles of Incorporation

On the other hand, respondent manifested during the hearing on June 22, 2017 that he will not be presenting his witness.[24] The Court

[24] Minutes of the Hearing, Docket, vol. III, pp. 1268-1269.

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then directed the parties to submit their respective memoranda within thirty (30) days.

The Court received respondent's Memorandum on July 31, 2017 and petitioner's Memorandum on August 10, 2017.[25] Hence, the Court declared the case submitted for decision as of August 16, 2017.[26]

ISSUE:

The parties stipulated that the sole issue for the Court's consideration is as follows:[27]

> Whether petitioner is entitled to a refund of illegally-collected value-added tax amounting to Twenty-Seven Million Three Hundred Forty-One Thousand Seven Hundred and Fourteen Pesos (₱27,341,714.00).

Pertinent to the resolution of the stipulated issue are Sections 204(C) and 229 of the NIRC of 1997, as amended, which are quoted hereunder for ready reference:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing

[25] Docket, vol. III, pp. 1280-1285 and 1296-1324.
[26] Resolution, Docket, vol. III, p. 1330.
[27] Issue, Joint Stipulation of Fact and Issue, Docket, vol. II, p. 684.

> an overpayment shall be considered as a written claim for credit or refund."
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> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Pursuant to the afore-quoted provisions, to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be complied with: (1) that the tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected; and (2) that the claim for refund or credit has been filed within two years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment.

The tax has been erroneously or illegally collected

At the outset, it must be pointed out that the issue on petitioner's exemption from the payment of VAT is not novel.

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In a number of decisions[28] involving the same parties and issues but covering different periods, this Court has consistently ruled that pursuant to Section 109(K) of Republic Act (RA) No. 9337, petitioner is exempted from VAT as provided under Presidential Decree No. 972[29].

Section 109(K) of RA No. 9337 provides that transactions which are exempt under special laws are also exempt from VAT, to wit:

> "SEC. 109. *Exempt Transactions.* – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
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> xxx xxx xxx
>
> (K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;"

PD No. 972 is a special law which aims to accelerate the exploration, development, exploitation, production, and utilization of the country's coal resources, and to provide incentives not only to coal users, but more importantly, to operators of coal operating contracts. To encourage and promote said policy, the law itself provided tax incentives such as exemptions expressly granted to operators of a contract under said Decree by virtue of Section 16 thereof, which reads:

> "SECTION 16. *Incentives to Operators.* – The provision of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:
>
> a) Exemption from all taxes except income tax;
>
> b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment

[28] CTA EB No. 772 (CTA Case Nos. 7727 and 7783), June 22, 2012; CTA EB Case No. 793 (CTA Case Nos. 7822 and 7849), April 23, 2012; CTA EB No. 752 (CTA Case No. 7867), March 22, 2012.

[29] *Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal.*

and spare parts and materials required for the coal operations subject to the following conditions:

1) that machinery, equipment, spare parts and materials of comparable price and quality are not manufactured in the Philippines;

2) that the same are directly and actually needed and will be used exclusively by the operator in its operations or in operation for it by a contractor;

3) that they are covered by shipping documents in the name of the operator to whom the shipment will be delivered directly by the customs authorities; and

4) that prior approval of the Energy Development Board was obtained by the operator before the importation of such machinery, equipment, spare parts and materials, which approval shall not be unreasonably withheld; xxx"

Petitioner is an operator under a Coal Operating Contract[30], where the Philippine government is a signatory. The said tax exemption was embodied in Section V, 5.2 of its COC, to wit:

"SECTION V – RIGHTS AND OBLIGATIONS
OF THE PARTIES

xxx xxx xxx

5.2 The OPERATOR shall have the following rights:

(a) Exemption from all taxes (national and local) except income tax;

(b) Exemption from all payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts, and materials required for the Coal Operations xxx"

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[30] Exhibits "P-16" and "P-17", Docket, vol. II, pp. 913-932 and 933.

From the foregoing, petitioner, as a coal mine operator under its COC, is entitled to exemption from all taxes, both national (including VAT) and local, other than income tax, and on duties and taxes on importation of materials required for its operations.

To further bolster its claim, petitioner presented its Certificate of Qualification for Tax Exemption under PD No. 972[31] issued by the Department of Energy (DOE) prior to its importation, the relevant portions of which state:

> "Pursuant to Presidential Decree No. 972, and subject to all the requirements and conditions set forth in said decree and in the implementing rules and regulations governing tax-exempt importations under Presidential Decree No. 972, please be informed that:
>
> **SEMIRARA MINING CORPORATION**
> 2nd Floor, DMCI Plaza,
> 2281 Pasong Tamo Ext., Makati City
>
> is qualified to import the following machinery, equipment, spare parts and/or materials without payment of the customs duties and taxes imposed under Executive Order No. 273, including the Ad Valorem Duty imposed under Executive Order Nos. 438 and 443:
>
> 36,000,000 liters diesoline
> Proforma Invoice No. 2013-001
> Price: US$30,081,600.00***"

Respondent, however, contends that Section 16 of PD No. 972 was repealed by Section 534 of RA No. 7160, and that Section 193 of the latter withdrew all existing tax exemptions granted prior to its enactment, making petitioner liable for excise tax and VAT on all importations.

As such, respondent imposed VAT on petitioner's importation of 6,176,367 liters of diesel,[32] in the amount of ₱27,340,714.00, pursuant

[31] Exhibit "P-19", Docket, vol. II, p. 938.
[32] Exhibits "P-3" and "P-5", Docket, vol. II, pp. 754 and 757, respectively.

to Section 3 of Revenue Regulations No. 2-2012[33], which was paid by petitioner on September 3, 2013 as evidenced by the corresponding Statement of Settlement of Duties and Taxes[34] and Import Entry and Internal Revenue Declaration[35].

Respondent's contention is misplaced and its imposition of VAT has no legal basis.

RA No. 7160 (also known as the "Local Government Code of 1991"), which took effect in the year 1992, declared the State's policy that its territorial and political subdivisions shall enjoy genuine and

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[33] SECTION 3. *Tax Treatment of All Petroleum and Petroleum Products Imported and Its Subsequent Exportation or Sales to Freeport and Economic Zone Locators or Other Persons/Entities; Refund of Taxes Paid; Authority to Release Imported Goods (ATRIG) and Other Administrative Requirements.* –The Value-Added and Excise taxes which are due on all petroleum and petroleum products that are imported and/or brought directly from abroad to the Philippines, including Freeport and Economic zones, shall be paid by the importer thereof to the Bureau of Customs (BOC).

The subsequent exportation or sale/delivery of these petroleum or petroleum products to registered enterprises enjoying tax privileges within the Freeport and Economic zones, as well as the sale of said goods to persons engaged in international shipping or international air transport operations, shall be subject to 0% VAT. With respect to the VAT paid on petroleum or petroleum products by the importer on account of aforesaid 0% VAT transactions/entities and the Excise taxes paid on account of sales to international carriers of Philippine or Foreign Registry for use or consumption outside the Philippines or exempt entities or agencies covered by tax treaties, conventions and international agreements for their use or consumption (covered by Certification in such entity's favor), as well as entities which are by law exempt from indirect taxes, the importer may file a claim for credit or refund with the BOC, which shall process the claim for refund, subject to the favorable endorsement of the BIR, in accordance with existing rules and procedures: *Provided*, that no claim for refund shall be granted unless it is properly shown to the satisfaction of the BIR that said petroleum or petroleum products have been sold to a duly registered locator and have been utilized in the registered activity/operation of the locator, or that such have been sold and have been used for international shipping or air transport operations, or that the entities to which the said goods were sold are statutorily zero-rated for VAT, and/or exempt from Excise taxes.

In the event that the said Freeport/Economic zone registered enterprise shall subsequently sell/introduce the petroleum or petroleum products, or part of the volume thereof, into the customs territory (except sales of fuel for use in international operations) or another Freeport/Economic zone registered enterprise not enjoying tax privileges, no refund for excise taxes shall be granted to the importer for the product sold. In any event, the possessor of petroleum or petroleum products must be able to present sufficient evidence that the excise taxes due thereon have been paid, otherwise the excise taxes due on said goods shall be collected from said possessor/user.

In case of sale/introduction of petroleum and petroleum products, or part of the volume thereof, by a Freeport/Economic zone registered enterprise, or part/volume thereof, into the customs territory or to a Freeport/Economic zone registered enterprise not enjoying tax privileges, or any sale to an entity not enjoying 0% VAT rate, the seller shall be liable for 12% VAT. In this instance, no refund for VAT shall be allowed the importer or an assessment for VAT shall be issued to the said importer, if the refund has already been granted, and another assessment for VAT shall be made against the seller.

[34] Exhibit "P-2", Docket, vol. II, p. 753.

[35] Exhibit "P-3", Docket, vol. II, p. 754.

meaningful local autonomy. Sections 193 and 534 of the said law state:

> "SEC. 193. *Withdrawal of Tax Exemption Privileges.* – Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."
>
> "SEC. 534. *Repealing Clause.* –
>
> xxx xxx xxx
>
> (e) The following provisions are hereby repealed or amended insofar as they are inconsistent with the provisions of this Code: Sections 2, 16 and 29 of Presidential Decree No. 704; Section 12 of Presidential Decree No. 87, as amended; Sections 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of Presidential Decree No. 463, as amended; and Section 16 of Presidential Decree No. 972, as amended, xxx"

Corollary thereto, Articles 283 and 474 of the Implementing Rules and Regulations of the Local Government Code of 1991 explain the repeal and withdrawal of exemption in this manner:

> "ARTICLE 283. *Withdrawal of Tax Exemption Privileges or Incentives.* – Unless otherwise provided in this Rule, beginning January 1, 1992, **all local tax exemption privileges or incentives granted to and presently enjoyed by any person, whether natural or juridical, including GOCCs, are considered withdrawn**, except the following:
>
> xxx xxx xxx
>
> ARTICLE 474. *Repealing Clause.* – (a) Except as otherwise provided in the Code, the following are repealed:
>
> xxx xxx xxx

(b) **Insofar as they are inconsistent with the provisions of the Code, the following are repealed, amended, or modified accordingly**:

(1) Sections 2, 16, and 29 of PD 704; Sec. 12 of PD 87, as amended; Sections 52, 53, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of PD 463, as amended; and **Section 16 of PD 972, as amended**; xxx" *(Emphasis supplied)*

Even though Section 16 of PD No. 972 was expressly mentioned in the repealing clause of RA No. 7160, it is evident that the repealed, modified or amended part of PD No. 972 is only that which is inconsistent with the provisions of RA No. 7160, particularly, the exemption on local taxes. Upon the effectivity of RA No. 7160, only the local tax exemption granted to petitioner under PD No. 972 was withdrawn. Therefore, petitioner's exemption from national taxes (including VAT and excise tax) and duties and taxes on importation subsists.

Moreover, records show that respondent confirmed petitioner's exemption from VAT, pursuant to Section 16 of PD No. 972 and Section 4.109-1(B)(k) of RR No. 16-2005, even after the effectivity of RA No. 7160, through BIR Ruling No. DA-002-2006[36] dated January 5, 2006, which states:

"Notwithstanding the provisions of Republic Act No. 9337 subjecting the sale or importation of petroleum products, including raw materials for their production to the value-added tax, the importation of SMC of the petroleum product which is considered a necessary ingredient in the exploration, development and exploitation of coal lands, is exempt from the value-added tax pursuant to the provisions of Section 16 of PD No. 972. Moreover, such exemption provided in PD No. 972 is recognized in Section 4.109-1(B)(k) of Revenue Regulations No. 16-2005 which provides:

'Sec. 4.109-1. ***VAT Exempt Transactions.*** –

xxx

[36] Exhibit "P-18", Docket, vol. II, pp. 935-937.

(B) Exempt Transactions. –

xxx

(k) Transactions which are exempt under international agreements to which the Philippine is a signatory **or under special laws** except those granted under PD No. 529 – Petroleum Exploration Concessionaires under the Petroleum Act of 1949.' (Emphasis supplied)

In view of all the foregoing, this Office hereby confirms your opinion that diesel fuel oils can be imported duty and tax free by Semirara Mining Corporation (SMC)."

Nevertheless, even without the said BIR Ruling, petitioner's claim is anchored upon a valid and existing law and founded on an express grant of exemption.

As regards respondent's basis in imposing VAT on petitioner's importation of diesel, no less than the Supreme Court has declared RR No. 2-2012 null and void.

In the case of *Secretary of Finance Cesar B. Purisima and Commissioner of Internal Revenue Kim S. Jacinto-Henares vs. Representative Carmelo F. Lazatin and Ecozone Plastic Enterprises Corporation*[37], the Supreme Court ruled in this wise:

"On the merits of the case, we rule that RR 2-2012 is invalid and unconstitutional because: a) it illegally imposes taxes upon FEZ enterprises, which, by law, enjoy tax-exempt status, and b) it effectively amends the law *(i.e.,* RA 7227, as amended by RA 9400) and thereby encroaches upon the legislative authority reserved exclusively by the Constitution for Congress.

xxx xxx xxx

RR 2-2012 is unconstitutional.

[37] G.R. No. 210588, November 29, 2016.

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According to the respondents, the power to enact, amend, or repeal laws belong exclusively to Congress. In passing RR 2-2012, petitioners illegally amended the law - a power solely vested on the Legislature.

We agree with the respondents.

The power of the petitioners to interpret tax laws is not absolute. The rule is that regulations may not enlarge, alter, restrict, or otherwise go beyond the provisions of the law they administer; administrators and implementors cannot engraft additional requirements not contemplated by the legislature.

It is worthy to note that RR 2-2012 does not even refer to a specific Tax Code provision it wishes to implement. *While it purportedly establishes mere administration measures for the collection of VAT and excise tax on the importation of petroleum and petroleum products, not once did it mention the pertinent chapters of the Tax Code on VAT and excise tax.*

While we recognize petitioners' essential rationale in issuing RR 2-2012, the procedures proposed by the issuance cannot be implemented at the expense of entities that have been clearly granted statutory tax immunity.

Tax exemptions are granted for specific public interests that the Legislature considers sufficient to offset the monetary loss in the grant of exemptions. To limit the tax-free importation privilege of FEZ enterprises by requiring them to pay subject to a refund clearly runs counter to the Legislature's intent to create a free port where the 'free flow of goods or capital within, into, and out of the zones' is ensured.

Finally, the State's inherent power to tax is vested exclusively in the Legislature. We have since ruled that the power to tax includes the power to grant tax exemptions. Thus, the imposition of taxes, as well as the grant *and* withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.

As RR 2-2012, an executive issuance, attempts to withdraw the tax incentives clearly accorded by the legislative

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> to FEZ enterprises, the (petitioners) have arrogated upon themselves a power reserved exclusively to Congress, in violation of the doctrine of separation of powers.
>
> In these lights, we hereby rule and declare that RR 2-2012 is null and void."

As in the instant case, RR No. 2-2012 directly contravenes the tax exemptions granted to petitioner under PD No. 972 and its COC, as discussed above. It is an unreasonable burden for petitioner to pay the tax which by law specifically exempts petitioner.

Accordingly, since RR No. 2-2012 is of no force and effect, respondent's imposition of VAT on petitioner's importation of diesel is without valid basis. As such, the payment of VAT by petitioner on its importation of diesel is erroneous and illegal.

To emphasize, petitioner, as a coal mine operator under its COC, is exempt from national taxes (including VAT and excise tax), other than income tax, and on duties and taxes on importation of materials (diesoline, in this case) required for its operations pursuant to Section 109(k) of the NIRC of 1997, in relation to Section 16 of PD No. 972.

Therefore, petitioner is entitled to the refund of the illegally collected or erroneously paid VAT on the importation/partial shipment of diesel in the amount of ₱27,340,714.00.

The claim for refund was filed within two years from date of payment of tax

Aside from the earlier quoted Sections 204 and 229 of the NIRC of 1997, as amended, the Supreme Court has consistently ruled that a claim for refund or credit with the BIR and the subsequent appeal to this Court must be filed within two (2) years from the date of payment of the tax.[38]

[38] *Commissioner of Internal Revenue vs. Victorias Milling Co., Inc. and The Court of Tax Appeals*, G.R. No. L-24108, January 3, 1968.

Based on the records of the case, petitioner paid and remitted to the BIR the assessed VAT on its partial shipment of diesel on September 3, 2013[39]. Counting two (2) years from the said date, petitioner had until September 3, 2015, within which to file its claim both in the administrative and judicial levels. Clearly, petitioner's administrative claim[40] filed on May 29, 2015, and the subsequent appeal before this Court filed on September 1, 2015 were made within the two-year period prescribed by law.

WHEREFORE, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of ₱27,340,714.00, representing the VAT illegally collected from or erroneously paid by petitioner on its importation/partial shipment of diesel.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division

[39] Exhibits "P-2" and "P-3", Docket, vol. II, pp. 753 and 754.
[40] Exhibit "P-1", Docket, vol. II, pp. 746-752.